No. 80-338

IN THE

Supreme Court of the United States

OCTOBER TERM, 1980

HCSC—LAUNDRY,

Petitioner,

v.

THE UNITED STATES OF AMERICA.

PETITION FOR WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

BRIEF AMICUS CURIAE OF THE AMERICAN HOSPITAL ASSOCIATION IN SUPPORT OF THE PETITION FOR CERTIORARI

JAY HOMER HEDGEPETH
KAREN KOPPEL KAUNITZ
840 North Lake Shore Drive
Chicago, Illinois 60611

Attorneys for Amicus Curiae
American Hospital Association

Pandick Press Midwest, Inc., Chicago • 454-7600

No. 80-338

IN THE

Supreme Court of the United States

OCTOBER TERM, 1980

HCSC—LAUNDRY,

Petitioner,

v.

THE UNITED STATES OF AMERICA.

PETITION FOR WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

BRIEF AMICUS CURIAE OF THE AMERICAN HOSPITAL ASSOCIATION IN SUPPORT OF THE PETITION FOR CERTIORARI

INTEREST OF THE AMICUS

Amicus Curiae American Hospital Association respectfully presents this brief in support of Petitioners' request that a writ of certiorari issue from this court to review the judgment of the United States Court of Appeals for the Third Circuit in the above entitled cause.

The American Hospital Association has obtained the written consent of both the Petitioner and Respondent to the filing of this amicus curiae brief. True copies of letters evidencing such consent have been lodged with the Clerk of the Court.

The American Hospital Association (AHA) is the primary organization of hospitals and other health care institutions in the United States. It is a not-for-profit membership corporation organized under the laws of the State of Illinois. The principal corporate object of the AHA is "to promote the welfare of the public through its leadership and its assistance to its members in the provision of better health services for all people." It enjoys a federal income tax exemption under the provisions of Section 501(c)(6) of the Internal Revenue Code. Its membership includes more than 6,200 hospitals and health care institutions, as well as over 30,000 personal members.

The majority of the AHA's member hospitals and health care institutions are either tax exempt hospitals or other tax exempt health care institutions or are public institutions not subject to federal income taxation. It is highly critical to member institutions of both types, as well as in the public interest, that these institutions be permitted to obtain economies of scale through joint tax exempt efforts, consistent with their individual statuses as organizations not subject to federal income taxation. There is simply no justification for taxing a collective effort that, if individually performed, would not be subject to taxation.

This brief is submitted in the hope that it will assist the Court in deciding to grant certiorari in this case and rule on the important issue presented therein.

REASONS FOR GRANTING THE WRIT

THE COURT SHOULD DECIDE THIS CASE BECAUSE OF ITS POTENTIAL IMPACT ON THE ACHIEVEMENT OF COST-EFFECTIVE, QUALITY HEALTH CARE SERVICES THROUGHOUT THE NATION.

As the spokesman for the hospital industry, the AHA has vital interest in this litigation. AHA has an historical commitment to the principle of quality health care for hospital

patients. The AHA also recognizes that the containment of hospital costs is critical to the continued provision of quality health care by hospitals. Hence, the AHA has traditionally undertaken to reduce the cost of hospital goods and services.

More recently, the historical AHA cost containment efforts have culminated in the Voluntary Effort (VE), a nationwide, private sector program to contain the increase in health care costs. The VE was created as a coalition of major national organizations, including the AHA, American Medical Association and the Federation of American Hospitals, concerned about the cost, provision, and quality of health care services. The VE's broad coalition of hospitals, physicians, insurers and other concerned parties has made substantial strides in cost containment despite environmental and inflationary factors which tend to increase hospital costs. In support of these efforts, the AHA's Center for Multi-Hospital Systems and Shared Services Organizations (now called the Center for Multi-Institutional Arrangements) was created in 1978 to provide support in the development and promotion of multi-institutional arrangements. The increased utilization of multi-institutional arrangements have been an integral part of cost containment efforts.

The hospital industry has evolved from one in which hospitals functioned as relatively independent entities, to one in which there is an increasing variety of interdependent institutional arrangements. It has been estimated that over one-third of all hospital beds in the United States are included in multi-hospital systems. Benefits which multi-hospital systems and shared services organizations provide to participating institutions include the following: economies of scale in purchasing and operational efficiency; reduction in duplication of equipment, facilities, services and staff; improved resource allocations; improved managerial capabilities through specialized management personnel, greater accessibility and avail-

ability of services, manpower, and facilities, and increasing ability of participating institutions to compete effectively in the acquisition of capital funding for both maintenance and improvement of facilities and equipment.

One example of the benefits to hospitals of using multi-institutional arrangements is in the area of laundry services. Shared laundry services currently contribute to American hospitals by their ability to provide both quality and cost effective services. These shared laundry service arrangements are uniquely capable of responding to the specialized needs of hospitals, especially with regard to disease control, cross infection, and sterilization. Benefits offered by shared laundry services include the following: reduction in administrative and supervisory cost; decreased energy consumption; expansion of available space for patient care; and improved sanitary control. In addition, experience indicates that better health care results from the daily collection and delivery of laundry to off-premises locations.

Shared laundry services justifiably seek, and should be given, benefits of a tax exemption when they are organized to provide a necessary and essential function to the charitable efforts of tax exempt hospitals. The cost savings from these services, when augmented by savings from a tax exemption, offer tremendous support to containing the costs of providing quality health care. In some instances savings from such tax exemptions can mean the difference between cost containment or curtailment of services. If shared laundry services are not granted tax exempt status, the resulting tax burden will necessarily be passed on to member hospitals in the form of higher costs of laundry services. The higher cost must then be passed on to hospital patients or those who pay for their services.

Higher costs must even be shared by the federal government, which reimburses hospitals for their services under several programs, chief among these being Medicare and Medicaid. The Congress is also acutely sensitive to any increase in hospital costs to the general public. Administratively, the

U.S. Department of Health and Human Services (DHHS) has encouraged cost containment of Medicare and Medicaid services through multi-institutional efforts. Congress has also acted directly to encourage multi-institutional efforts through health planning legislation. Curiously, only the Internal Revenue Service (IRS) has undertaken to thwart or discourage such efforts by denying tax exemption status.

It is troubling to our industry that on the one hand the DHHS and Congress encourage hospitals to enter into those sorts of arrangements so as to cut costs, while on the other, the IRS impedes the effectiveness of such arrangements by attempting to tax them. A brief discussion of some of these cost containment efforts emphasizes the injudiciousness of denying shared laundry services tax exempt status, and the importance of prompt resolution of this issue to protect these containment efforts.

The governmental efforts in this area include the "prudent buyer principle" mandated by DHHS (formerly Department of Health, Education, and Welfare) which requires hospitals to act as "prudent and cost-conscious buyers" seeking to minimize the costs of goods and services. Provider Reimbursement Manual (P.R.M.), HIM-10, Part L, § 2103.[1] This principle is designed to encourage group or bulk purchases and economics of scale through multi-institutional efforts. Since this rule mandates that hospitals buy wisely, it encourages shared services by limiting reimbursement of costs to whatever lesser costs might have been available through group purchasing or other means.

This encouragement by DHHS of shared services arrangements to contain costs is consistent with the intent of Congress as expressed in the National Health Planning and Resources Development Act. In 42 U.S.C. § 300K-2, Congress found that shared services deserved "priority consideration in the formula-

[1] The Manual is based on 20 C.F.R. 405.451(c)(2)(ii) and 40 Fed. Reg. 51, 474 and 51, 975 (1975).

tion of national health planning goals and in the development and operation of Federal, State, and area health planning and resources development programs." In doing so, it identified as such a goal: "The development of multi-institutional arrangements for the sharing of support services necessary to all health service institutions."

Shared laundry services, such as these involved in this case, are favored by Congress as an essential part of the overall cost containment effort.

The utilization of shared services, including shared laundry services, is therefore critical to the overall cost containment efforts of both the hospital industry and the federal government. This case involves considerably more than a challenge to the tax status of one shared laundry service. This issue affects shared laundry services throughout the nation, and thus a substantial element of hospital costs. As was thoroughly discussed in the petition for certiorari, a sharp split regarding the federal income tax status of such organizations now exists between various federal courts, including those of co-equal rank.

Since the continued ability of shared laundry services to provide quality and cost effective services to hospitals is at stake in this litigation, it is of crucial importance to the hospital industry and to the public interest that the court accept the petition for certiorari. Otherwise, the uncertainty of the judicial outcome on exemption issues and the unilateral approach by the IRS will continue to hamper multi-institutional efforts that are dictated by common prudence and encouraged by both Congress and administrative agencies other than the IRS.

CONCLUSION

For the above reasons and those set forth in the Petition for Writ of Certiorari, we urge this Court to grant certiorari to review the judgment of the United States Court of Appeals for the Third Circuit.

Respectfully submitted,

JAY HOMER HEDGEPETH
KAREN KOPPEL KAUNITZ
840 North Lake Shore Drive
Chicago, Illinois 60611

Attorneys for Amicus Curiae
American Hospital Association